

Decision 96-07-058 July 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA EDISON COMPANY)
(U 338-B) for Authority to Enter) Application 96-02-023
Into Four Agreements With Pacific) (Filed February 8, 1996)
Lightwave, Inc. (U-5371-C) to Lease)
Underground Conduit Space and)
Aboveground Cable Space.)

ORIGINAL

OPINION

1. Summary

Southern California Edison Company (Edison) seeks authority to enter into four agreements with Pacific Lightwave, Inc. (PLI) by which PLI would lease underground conduit space and aboveground pole space owned by Edison to install fiber optic cable in San Bernardino and five other cities. Edison would comply with conditions recommended by the Commission's staff in a similar lease proposal last year. The application is granted.

2. Background

On February 8, 1996, Edison filed this application for authority to enter into four agreements with PLI for the lease of certain unused underground conduit space and aboveground cable space owned by Edison in the areas of San Bernardino, Etiwanda, Ontario, Upland, Monterey Park and City of Industry. The application is filed pursuant to Section 851 of the Public Utilities (PU) Code. Section 851 requires Commission approval of any lease or other transfer of public utility property.

PLI is certified by this Commission to operate as an interexchange telephone company. It is constructing a fiber optic telecommunications system and would use the Edison rights-of-way to extend the system through parts of the specified cities.

Edison states that it has space in its underground conduit and aboveground cable facilities that it will not need during the term of the proposed PLI leases. The terms and conditions of the leases between Edison and PLI are set forth in four agreements:

* Cable license/lease agreement dated July 11, 1994, as amended September 7, 1995, dealing with San Bernardino facilities.

* Cable license/lease agreement dated January 16, 1995, as amended September 7, 1995, dealing with Etiwanda/Ontario facilities.

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* Cable license/lease agreement dated February 23, 1995, dealing with Ontario/Upland facilities.

* Cable license/lease agreement dated August 9, 1995, dealing with Monterey Park/City of Industry facilities.

The four agreements are similar in most respects. Edison states that it seeks to reduce administrative burden by submitting a single consolidated application covering all four agreements. The agreements and their amendments are attached to the application as Exhibits 1 through 6.

All of the agreements initially give PLI a license to use the available space for fiber optic installation. Once the Commission grants Edison appropriate authority, the licenses will be converted into 10-year leases, each of which may be renewed for one additional 10-year period. Edison states:

PLI is certified by this Commission to operate as an interexchange telephone company. It is constructing a fiber optic telecommunications system and would use the Edison rights-of-way to

1 General Order 96-02 permits public utilities to grant easements, licenses, or permits for use of their property when the public utility functions are not affected.

The agreements are examples of Edison's ongoing efforts to generate revenue for ratepayers through the commercial use of Edison's temporarily available conduit and aboveground pole space. The Agreements will generate annual revenues of approximately \$150,000 for at least ten years.... The Agreements will also allow PLI to avoid disruptive construction activities that otherwise would be required to serve customers in these areas." (Application, pp. 2-3.)

Collectively, the agreements grant PLI the right to:

- (1) install multiple innerduct sleeves and one fiber optic cable within one of the sleeves, and
- (2) attach one fiber optic cable to Edison-owned aboveground poles.

The fiber optic cable will extend a total distance of approximately 558,604 linear feet. Edison describes the scope of the individual agreements as follows:

- San Bernardino - One fiber optic cable to be installed along an approximate 244,821 linear-foot portion of Edison's aboveground cable space.
- Etiwanda/Ontario - One fiber optic cable to be installed along an approximate 292,110 linear-foot portion of Edison's aboveground cable space.
- Ontario/Upland - Three innerduct sleeves and one fiber optic cable to be installed within an approximate 10,200 linear-foot portion of Edison's underground conduit space.
- Monterey Park/City of Industry - Four innerduct sleeves and one fiber optic cable to be installed within a 2,973 linear-foot portion of Edison's underground conduit space, and one fiber optic cable to be installed along an approximate 8,500 linear-foot portion of above-ground cable space.

PLI will bear all costs of construction and will deed title to all of the installations (valued at \$2.8 million) to Edison after completing construction. Edison will be free to find other commercial uses for innerduct sleeves not used by PLI.

(following a right of first refusal), PLI will maintain the installations. After the licenses are converted to leases, PLI will acquire an indefeasible right of use of the installations. PLI will make annual payments to Edison for use of these facilities.

Edison states that the lease of the available cable space will not degrade its ability to provide electric service to its customers.

3. Notice Requirements

In an application last year for a similar lease of unused cable space, Edison agreed to notice requirements proposed by the Commission's Advisory and Compliance Division (ACD) and the Division of Ratepayer Advocates (DRA) to ensure that Edison was not itself providing telephone services. In this application, Edison commits itself to similar notice provisions. Specifically, Edison agrees:

- * To notify DRA and ACD in writing of any substantive change in the PLI agreements within 30 days of such change
- * To notify DRA and ACD of any substantive change to Edison's plant-in-service resulting from PLI's installations and operation
- * To notify DRA and ACD if any right-of-way ceases to be used and useful in providing electric service, or if there are any substantive changes in right-of-way segments licensed or leased to PLI
- * To notify DRA and ACD in advance of any proposed agreement by which Edison or any Edison affiliate would make direct use of cable installed by PLI.

PLI will bear all costs of construction and will deed title to all of the installations (valued at \$2.8 million) to Edison after completing construction. Edison will be free to find other commercial uses for induct sleeves not used by PLI.

2 Decision (D.) 95-05-039, 1995 Cal. PUC LEXIS 557

DRA and CACD last year also recommended that the Commission include a Conclusion of Law in its decision noting that no telecommunications authority for Edison was contemplated. We assert the same conclusion in our order today. The notice of required requirements set forth in Edison's application also are to be incorporated in the ordering paragraphs.

4. Environmental Effects/Pricing
The Commission concluded in D.93-04-019/148 CPUC2d 602 (1993) and in D.94-06-017/1994 Cal PUC (LEXIS 458) that an environmental review of agreements like these is required. Earlier, in a case involving telephone company uses of certain Pacific Gas and Electric Company aboveground facilities, the Commission likewise found the proposal exempt from environmental requirements. (D.92-07-007, 45 CPUC2d 24 (1992)). We reach the same conclusion here noting, in addition, that the proposal is exempt because it can be seen with certainty that there is no possibility that there will be a significant effect on the environment (14 Cal Code of Regulations §15061(b)(3)). The installations will be made in existing conduits and cable with no alterations of the environment outside of these facilities.

Pricing provisions and the methodology used by Edison to set the price for the agreements are set forth in the application and its attachments. In general, in addition to the value Edison will obtain through transfer of the fiber optic cable, PLI has agreed to pay Edison (1) a one-time fee of \$0.17 per aboveground linear cable foot and an annual fee of \$0.20 per aboveground linear cable foot for the San Bernardino and Etiwanda/Ontario uses; (2) an annual fee of \$3 per underground cable foot in the Ontario/Upland agreement; and (3) a one-time fee of \$0.17 per aboveground linear cable foot, an annual fee of \$0.23 per aboveground linear cable foot, and an annual fee of \$3.50 per underground cable foot in the Monterey Park/City of Industry areas.

1994 CAL PUC LEXIS 458; D.92-02-032; 1992 CAL PUC LEXIS 224
1993 CAL PUC LEXIS 458; D.93-04-019; 1993 CAL PUC LEXIS 458

5. Discussion

We will grant Edison the requested authority. The agreements between Edison and PLI make good sense from several perspectives, and we have noted this in earlier decisions approving use of unused utility space for fiber optic installation.

The agreement makes productive use of what is currently available cable space. It is sensible for California's energy utilities, with their extensive easements, rights-of-way, and cable facilities, to cooperate in this manner with the telecommunications utilities that are seeking to build the fiber optic network. Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with a utility's operation.

Finally, the agreements will allow improved service to PLI's customers. At the same time, residents of the affected communities will be spared the disruption that would occur if PLI installed its own conduits or fiber optic cables along public or private streets.

Our order provides that PLI shall not use these facilities to provide service beyond that authorized under its certificate of public convenience and necessity. In addition, we require that Edison not unduly discriminate among telecommunications companies in providing access to its conduit rights-of-way.

6. Pass-Through to Ratepayers
Revenues generated by these agreements are intended to flow to and benefit ratepayers. Edison notes that revenues received prior to January 1, 1995, have been treated as direct

an annual fee of \$0.23 per aboveground linear cable foot, and an annual fee of \$0.20 per underground cable foot in the

³ See, e.g., D.93-04-019, 48 CPUC2d 602 (1993); D.94-06-017, 1994 Cal. PUC LEXIS 458; D.95-05-039, 1995 Cal. PUC LEXIS 557.

credit to Edison's Electric Revenue Adjustment Mechanism (ERAM) and balancing account. As the Commission directed in D:94-06-017 (June 8, 1994), revenues received for years 1995 and beyond were to be included on a forecasted basis in Account 454.450, Other Operating Revenue, in Edison's test year 1995 General Rate Case.

With the change to performance-based ratemaking, however, there may be no opportunity in the future to adjust Account 454.450 to true up costs and revenues and to recognize lease revenues that were not included in the forecasts. Therefore, it is appropriate to devise another method for pass-through of these revenues that, like test-year ratemaking, benefits ratepayers but also provides an incentive for Edison to spend the time and money necessary to negotiate sensible lease and license agreements.

Accordingly, we will direct Edison to use a sharing mechanism for these and all similar license/lease agreements that do not involve incremental costs. There will be no change in treatment of those revenues that have been included on a forecasted basis (Account 454.450) in Edison's test year 1995 General Rate Case. Revenues from agreements not included in the General Rate Case forecast will be split 50/50 between the utility and ratepayers. 50% of such revenues will be treated as a direct credit to Edison's ERAM balancing account. The utility will bear the risk of a failure to achieve forecasted revenues and any costs associated with developing unforecasted projects. This revenue treatment will remain in place until Edison's next general rate case or implementation of performance-based ratemaking.

Findings of Fact

Edison filed this application on February 8, 1996, asking the Commission to approve four lease agreements with PLI under Section 85 of the PU Code. No protests have been filed.

Under the terms of the agreements, Edison will lease to PLI a portion of its existing underground conduit space, and aboveground cable space and rights-of-way in the areas of

Bernardino, Etiwanda, Ontario, Upland, Monterey Park, and City of Industry) - PLI will place fiber optic cable along approximately 558,604 linear feet of existing Edison rights-of-way. PLI will construct and maintain the installation, will bear the costs of construction and maintenance, and will deed title to the installation to Edison upon completion of construction. PLI will make annual payments to Edison in the amount of \$1.00 per year. There may be no opportunity in the future for Edison to purchase the cable. Payments to Edison under the agreements will flow to its ratepayers. PLI's installations are a minor alteration of existing utility structures involving negligible expansion of use beyond previously existing uses.

5. Edison has agreed to observe notice requirements proposed earlier by staff to make it clear that Edison is not seeking to offer telephone services and all similar licenses for these and other services.

6. It can be seen with certainty that no significant effects on the environment could result from our granting the requested authorization.

Conclusions of Law

1. Joint use of utility facilities should be encouraged in appropriate cases because of the obvious economic and environmental benefits.

Our approval of this application is exempt from the California Environmental Quality Act.

Edison should be authorized under PUC Code § 851 to lease the designated segments of its underground conduit space and to lease aboveground cable space to PLI and to permit use of and access to that part of its property to the extent necessary to carry out the agreements consistent with Commission rules.

4. Edison did not seek nor is it granted authority to offer telephone or telecommunications services. Edison would require Commission authority to begin offering telephone service to the public.

5. Because the agreement offers substantial benefits for ratepayers of Edison and customers of PLI, this decision should be effective on the date signed.

ORDER

1. Southern California Edison Company (Edison) is authorized to enter into four leases of underground conduit space and aboveground cable space with Pacific Lightwave, Inc. (PLI), as set forth in Exhibits 1 through 6 of Edison's application.

2. Edison shall annually credit to its Electric Revenue Adjustment Mechanism (ERAM) balancing account 50% of all revenues received from these and all similar agreements not reflected in Decision 96-01+011, Edison's Test Year 1995 General Rate Case decision.

3. Edison shall incorporate the 50% ERAM revenue credit into rates ordered in the forecast phase of its annual Energy Cost Adjustment Clause (ECAC) proceeding as Edison's update filing in the ECAC forecast phase shall include workpapers showing the calculation of this credit.

4. PLI shall not use these facilities to provide service beyond that authorized under its certificate of convenience and necessity.

5. Edison shall be subject to the following notification requirements:

Edison shall notify the Division of Ratepayer Advocates (DRA) and the Commission Advisory and Compliance Division (CACD) through their respective assistant directors for energy, in writing, of all substantive amendments to, extensions of, or termination of the agreements, within 30 days following the execution of such amendments, extensions or termination.

Edison shall notify the DRA and CACD assistant directors for energy, in writing, of any substantive changes to plant-in-service resulting from implementation of the agreements, within 60 days of any such change.

ORDER

c. Edison shall notify the DRA and CACD assistant directors for energy, in writing, if any right-of-way which is the subject of the agreements ceases to be used and useful for the provision of electric service or if there are any substantive changes in the right-of-way segments which are the subject of the agreements, within 30 days of any such event.

d. If Edison or any affiliate of Edison enters into an agreement to make direct use of the cable which is the subject of these agreements, Edison shall notify the DRA and CACD assistant directors for energy, in writing, at least 60 days prior to the commencement of such use. The required notification shall include a specification of the rates to be charged to Edison or the affiliate and the accounting principles which will be used to track the costs and payments associated with such use.

6. This proceeding is closed. This order is effective today. Dated July 17, 1996, at Sacramento, California.

Edison shall be subject to the following notification

P. GREGORY CONLON, President

- DANIEL WESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSHUA L. NEPPER
Commissioners